

REMARKS

Claims 2-6, 8, 9, 20, and 21 are currently pending, claims 20 and 21 being independent claims. The Examiner has rejected claims 2-6, 8, 9, 20, and 21 under 35 U.S.C. § 103(a) and claim 3 under 35 U.S.C. § 112, second paragraph.

Claims 3, 20, and 21 have been amended. No new matter has been added. In view of the above amendments and for the reasons provided below, the Applicant respectfully traverses the grounds for rejection and requests withdrawal thereof.

SECTION 112, SECOND PARAGRAPH REJECTIONS

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph as indefinite. Claim 3 has been amended. Accordingly, the Applicant believes that the grounds for rejection are now moot. Withdrawal of the grounds for rejection is respectfully requested.

ART REJECTIONS

The Examiner is thanked for the interview by telephone on March 17, 2010. At the interview, there was an understanding by the Examiner that the applicant felt a critical part of his invention lay in the fact that the air withdrawal through the liner apertures was the sole force holding the bag from being entirely drawn into the liner by operation of the fan. The suction holding the upper portions of the bag against the liner via its apertures held it there throughout the entire sucking or deployment of the bag simultaneously down into the liner and

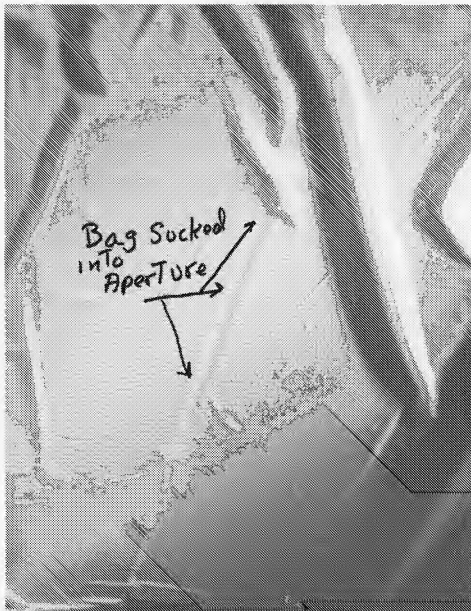
progressively holding more and more of the bag against the liner as it deployed down. The claimed structure accomplished those two actions, progressively holding the bag against the liner by suction and deploying the bag by drawing remaining portions of it deeper into the liner. The independent claims 20 and 21 have been amended to reflect this. It is acknowledged that the Examiner will need to update his search.

This amendment makes it clear that the claimed annular space (claims 20 and 21) has air access only through the liner apertures and the bottom withdrawing means. Support for the amendments on "rigid" liner and the annular space terminating at upper portions is found at p. 7, second full paragraph and p. 4, ll. 3-7, respectively.

Brooks has upper holes 23 between its inner and outer portions 30 that would provide no use for apertures along the tubular wall as in applicant's claims, in fact defeating their purpose. Holes 24 are in the bottom, not the tubular wall. Thus the Examiner's basis for rejection is based on an incorrect view of Brooks.

The amendments should help the Examiner to realize his analysis of Brooks is wrong. Even without the amendments there are no apertures in Brooks in the tubular wall, particularly proximate the opening. It is those apertures where the bag is first held in place by withdrawing air that are critical to hold it in place as its sides are drawn down. Brooks' structure cannot achieve the invention, as shown in evidentiary photos of record, of pinning the bag to the liner top to prevent sucking it in. See photo below showing that the bag is sucked slightly into an aperture securing it, like a tongue and groove, on the side as it is sucked in and down so the whole bag does not get sucked down as

happens were there are no apertures and annular space as shown in the prior response photos.



Gray also lacks the apertures around the tubular wall of the liner. It operates by mechanically raising and lowering of the liner to pump air in and out a bottom valved opening. Nothing in Brooks or Gray suggests combining or if combined achieving the apertures distributing up and down the tubular liner wall that allow pinning of the bag to the liner by vacuum so it is not sucked all the way in.

Martin has a single container with apertures. The bag 25 is held at the top between the rim 20 of extension 19 and the rim of the body 14 (col. 2, claims 33-51). While the body 14 has apertures they are only to allow air to escape the body 14 as the bag 25 fills. There is no air withdrawing means and no holding of the bag in the apertures during bag insertion.

Nothing suggests combining Martin and/or Brooks and Gray. Indeed, Martins unapertured walls of extension 19 would be just where the apertures are needed if it were to have a surrounding container and operate like applicant's invention. All three references are complete systems in their own right for holding trash bags and nothing in them suggests a reason for combining bits and pieces of one in another. Even if so combined, Applicant's invention is not achieved without prohibited hindsight reengineering. For example, handle 16 of Martin prevents insertion of the container inside a second container so using Martin as an inner liner is not only against Martin's teaching, but impossible without reengineering.

MORE PARTICULARLY:

SECTION 103(a) REJECTIONS

Claims 2-6, 8, 9, 20, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Number 6,000,571 to Brooks ("Brooks") in view of U.S. Patent Number 3,815,778 to Martin ("Martin") and U.S. Patent Number 7,273,155 to Gray ("Gray"). The Applicant again respectfully traverses the grounds for rejection.

With respect to Brooks and amended claim 20, the invention as claimed recites a vacuum-operated trash receptacle that includes an open top, tubular container, a closed bottom, tubular liner and air blower means. The Brooks receptacle, however, is neither vacuum-operated nor is the liner "closed bottom". More specifically, the Brooks inner base (16) of the inner portion (12) includes a plurality of bottom openings (24) and, hence, is not closed bottom. Moreover, the only mention of a vacuum in Brooks is the ability of these openings (24) in the inner base (16) to prevent a vacuum when a trash bag is removed from the inner portion (12) by admitting air through space 1a from upper vent holes 23. The invention as claimed creates a vacuum by "air blower means" to suck the bag in the liner pinning it to the multiple holes in the side, holding the top of the bag at the top of the liner. Because the reference and the invention as claimed perform mutually exclusive functions, i.e., provide openings to prevent a vacuum and provide holes to create a vacuum, doing the one with the other would defeat the purpose of one or the other. Indeed, applying a vacuum to the Brooks' receptacle would hinder removal of the trash bag -- the exact opposite of what is desired! Moreover, including openings in the bottom of the invention as claimed would impair the creation of a vacuum high up between the

liner and bag to pin the bag to the liner. A feature nowhere taught or suggested in Brooks and indeed impossible with Brooks.

Claim 20 provides that the liner wall includes a plurality of apertures around and down its tubular wall. The apertures communicate from the liner interior to an annular space created between the outer surface of the liner and the inner surface of the container. The Examiner concedes that Brooks does not teach, mention or suggest apertures in the wall of the liner, asserting, instead, that such a feature is taught by Martin. In Martin, however, there are no inner liner and outer container, merely an apertured container. The apertures (15) in Martin are provided in the sides of the lower main body (14) not in an inner liner. Accordingly, one skilled in the art combining the teachings of Brooks and Martin would have been motivated to include apertures in the outer container rather than in the inner liner, or at most in both liner and container. Indeed the presence of handle 16 in Martin teaches away from installing it inside a container and would make it impossible to do so. The Examiner is reminded of the prohibition on redesigning art to make it fit a claim absent any suggestion to do so and there is here no suggestion or possibility to do so.

The problem solved by Martin, which is to say, providing "a plurality of apertures to allow the trapped air [inside the receptacle] to escape between the bag and receptacle [as the trash bag fills up with garbage]" (Martin, col. 1, lines 22-24), provides no teaching, suggestion or motivation to include apertures in an inner liner or an inner liner-outer receptacle combination for "forcefully deploying [a trash bag] against and down said liner wall responsive to" withdrawing air from an annular space between the inner liner-outer receptacle combination while at the same

time pinning the bag to the liner as it progressively is deployed into the liner. Indeed, the top of the bag in Martin is held in place by being trapped by collar 20 on top portion 19 (col. 2, ll. 44-46). Thus, there is in Martin no need for the present invention. In fact, the top portion 19 has no apertures so it could not function as claimed.

More particularly, Martin also does not teach, mention, suggest or even allow for "means for withdrawing air from said annular space . . . wherein air pressure is reduced in said annular space and the trash bag is forcefully deployed against and down said liner wall responsive to operation of said air withdrawing means" as recited in claim 1. On the contrary, Martin's "apertures or perforations in the side walls of the receptacle [merely] **allow the trapped air between the bag and the inside wall to escape as the bag is filled,**" while held by collar 20. Id., col. 2, lines 65-67 (emphasis added). Neither Brooks nor Martin contemplate withdrawing air from an annular space through annular openings for the purpose of deploying a plastic garbage bag against an inner liner wall. As mentioned above, Martin only teaches providing apertures for dispelling a volume of air as the volume of garbage increases and Brooks merely teaches providing apertures in the inner base (16) so that removal of the bag does not create a vacuum, complicating the removal. The mechanics involved in two actions are not the same. The results achieved are not the same.

In his response to arguments, the Examiner categorizes this argument as "a recitation of an intended use". It is not. The applicant's argument goes to the unlikelihood that it would have been obvious to one skilled in the art at the time the invention was constructively reduced to practice to combine the structures

of the two references to arrive at the structure as claimed. It is not that "the prior art structure is capable of performing the intended use". The prior art structures are so different they would not and could not, combined or not, accomplish the structure that is claimed in claim 20 let alone operate the same. The Examiner has not met his burden of proof for obviousness.

Independent claim 20 further recites "an exhaust aperture through the [outer] container", further requiring the "means for withdrawing air from said annular space" between the inner liner and the outer container to do so "through said exhaust aperture", to "reduce air pressure" within the annular space and to "forcefully deploy" the trash bag against and down the liner wall. The Examiner concedes that Brooks does not teach, mention or suggest an exhaust aperture or the means for withdrawing air through the same, maintaining, however, that Gray does so. In his response to arguments, the Examiner assert that "the features upon which applicant relies (i.e., forcefully draws air out) are not recited in the rejected claims(s)." The Applicant respectfully disagrees.

With respect to the response to arguments, "the trash bag is forcefully deployed against and down said liner wall responsive to operation of said air withdrawing means" when air is withdrawn via liner apertures. For further clarity the claim is amended to recite "air blower means." It is high school physics that "withdrawing" air is only accomplished through the force of an air pressure differential, however small. Neither Martin, nor Gray, nor Brooks individually or jointly teach, mention or suggest a device that forcefully deploys a trash bag against and down said liner wall responsive to operation of said air withdrawing means!

With respect to the sufficiency of Gray to overcome the shortcomings of Brooks, the Examiner alleges that Gray Fig. 10 shows an exhaust aperture (94) through the container (90) and a fan (95) that is a withdrawing means. Accepting the Examiner's characterization, *arguendo*, the Gray "withdrawing means" is not positioned as claimed to withdraw air from an annular space between the liner and the container through a plurality of apertures in the liner, because those apertures and the liner do not exist in Gray. Only the receptacle 90 is present. Gray admits the bag has to be sealed around the top of receptacle 90 (col. 14, ll. 31-34). Gray's Fig. 9 is essentially the same as Fig. 10 in lacking the claimed liner inside a container and all the claimed features noted above.

Claims 20 and 21 have been further amended to expedite prosecution, to recite the feature that the container and the liner rim are in contact consistent with the vacuum effect. Gray, elsewhere in the original embodiment, also lacks the apertures around the tubular wall of the liner. It operates by mechanically raising and lowering of the liner to pump air in and out a bottom valved opening. Applicant's apertures would make Gray here inoperative. Nothing in Brooks or Gray suggests combining or, if combined achieving, the apertures distributing up and down the tubular liner wall.

Martin has a single container with apertures. The bag (25) is held at the top between the extension (19) by collar (20) and the rim of the body (14). See, e.g., Martin, col. 2, lines 33-51. While the body (14) has apertures, they are only to allow air to escape the body (14) as the bag (25) fills.

Once more, nothing suggests combining Martin and/or Brooks and Gray. Indeed, Martins unapertured walls of extension (19)

would be just where the apertures are needed if it were to have a surrounding container and operate like applicant's invention. All three references are complete systems in their own right for holding trash bags and nothing in them suggests a reason for combining bits and pieces of one in another. Even if so combined, Applicant's invention is not achieved without prohibited hindsight reengineering.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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